

American Samoa Department of Health Special Conditions under Part C of the IDEA

Enclosure B

Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on American Samoa's Federal Fiscal Year (FFY) 2005 grant award under Part C of the Individuals with Disabilities Education Act (Part C of IDEA), related to the following three longstanding areas of noncompliance identified in American Samoa's Self Assessment, FFY 2001, 2002, 2003 APRs and data from OSEP's child record review prior to OSEP's February 2005 verification visit to American Samoa:

1. All infants and toddlers do not receive a comprehensive evaluation and assessment in all five developmental areas within 45 days of referral as required by 34 CFR §§303.321(e)(2)(i) and 303.322(e)(1) (comprehensive, timely evaluation)
2. Individualized Family Service Plans (IFSPs) do not identify: (a) a child's present level of developmental functioning; (b) families resources, priorities and concerns; and (c) justification for services not in natural environments as required by 34 CFR §303.344 (IFSP content); and
3. Early intervention (EI) services are not being provided as required by 34 CFR §§303.340(c) and 303.342(e) (EI service provision).

Background:

OSEP's June 8, 2004 letter in response to American Samoa's FFY 2001, 2002 APR and May 2003 Self-Assessment identified noncompliance with the Part C requirements regarding comprehensive timely evaluation, IFSP content and EI service provision identified above. American Samoa acknowledged on page 2 of its FFY 2002 APR, that "there were not sufficient numbers of EI providers to meet the needs of all eligible infants and toddlers [with disabilities] and their families with the greatest deficit being in the area of consistently available professional staff, i.e., physical therapists, occupational therapists, speech therapists." The lack of qualified personnel in the areas of speech and psychology was identified by American Samoa as a longstanding noncompliance issue and contributed not only to lack of EI service provision in these areas, but also in ensuring that children were evaluated in all five developmental areas including communication, and social or emotional as required by 34 CFR §303.322(c)(2).

OSEP's review of child records and other data submitted on August 5, 2004 as well as child records reviewed prior to and during OSEP's February 2005 verification visit to American Samoa, confirmed continued noncompliance with the comprehensive, timely evaluation, IFSP content and EI service provision findings identified above. OSEP's June 2004 letter required American Samoa to submit a plan with its FFY 2003 APR by March 31, 2005, as well as a copy of the contract as confirmation that a speech therapist had been retained.¹ American Samoa's FFY 2003 APR failed to provide data confirming compliance in these three areas.

- A. Infants and toddlers received a comprehensive evaluation/assessment in all five developmental areas on a timely basis under 34 CFR §303.322.

1. Basis for requiring special conditions.

On page 10 of the FFY 2002 APR, American Samoa noted that "evaluation and assessments were not consistently conducted and did not utilize a standardized testing instrument but rather clinical observation of child and family" and "chart reviews revealed that not all children currently in Part C receive a comprehensive developmental evaluation utilizing a standardized testing

¹ In documents submitted during the verification visit in February 2005, American Samoa included contractual agreements for a Speech Language Pathologist, Physical Therapist, and Occupational Therapist from Washington State. The contracts were signed by the therapists during the October 1, 2004 visit and included an agreement that the contractors would visit the island quarterly (one every three months) for a period for 4 days from [October 1, 2004] to [October 31, 2005] and complete assigned duties that included: (1) Assessments/Evaluations; (2) Staff Training/Development; and (3) Consultation/Administrative Support.

instrument." At the August 2004 meeting in Washington, DC, OSEP learned that American Samoa had failed to hire or retain needed qualified personnel, including a speech language pathologist and psychologist, for the Part C program.

In January 2005, OSEP was informed that a full-time speech therapist was to be hired by July 1, 2005; however since then, OSEP learned in September 2005 that the speech therapist proposed to be hired has taken a position with American Samoa's Part B program. OSEP's record review of seven Part C child records provided by American Samoa prior to OSEP's verification visit in February 2005 confirmed that: (1) vision and hearing screenings were not conducted (7 records); and (2) speech evaluations were not completed for children with communication delay concerns (7 records). No data were provided in the FFY 2003 APR to indicate that evaluations included vision and hearing screenings. American Samoa's noncompliance regarding its failure to evaluate children in the area of communication delays is directly attributable to its lack of a qualified speech language pathologist.

2. Nature of special conditions.

In the first Progress Report, due on November 21, 2005, American Samoa must provide:

- a. Data for July, August, September and October 2005 for each infant and toddler referred to Part C at any time prior to the reporting date and suspected of having a disability who received a comprehensive evaluation/assessment in all five developmental areas, including vision and hearing social or emotional, and communication, and whether such evaluations were conducted within 45 days of referral. If the evaluation and assessment were completed longer than 45 days from referral, documented explanations for the reason for the delay (including any family circumstances outside the lead agency's control).

In the second Progress Report, due on April 14, 2006, American Samoa must provide:

- a. Updated data under 1 above for November and December 2005, and January, February, and March 2006.

B. IFSPs do not identify: (a) a child's present level of developmental functioning; (b) families resources, priorities and concerns; and (c) justification for services not in natural environments as required under 34 CFR §303.344 (content of IFSP).

1. Basis for requiring special conditions.

On page 10 of the FFY 2002 APR, American Samoa indicated, "child ... goals were not consistently developed" on IFSPs. It was also unclear from page 10 of the FFY 2002 APR whether all children had IFSPs. Prior to its March 2005 verification visit, OSEP reviewed seven child records and found significant noncompliance with the content of the IFSP as required under §303.344. Noncompliance found included: (1) no indication of present levels of development on IFSPs (7 records); (2) IFSP goals were not individualized (7 records); (3) no justification for services not in the natural environment (4 records); and (5) location of all services unclear on IFSPs (7 records).

On page 17 of the FFY 2003 APR, American Samoa reported, "by June 30, 2005, all IFSPs developed after March 1, 2005 will be individualized according to family and child's needs and will include family services, as necessary." The Territory also reported that IFSP content would be reviewed as part of monitoring and that by June 30, 2005, a new IFSP form would be developed to include family concerns, priorities and needs. No data were provided in the FFY 2003 APR on communication goals, outcomes and IFSP services for the December 1, 2004 child count for children having communication and/or speech or language delays.

2. Nature of special conditions.

In the first Progress Report, due on November 21, 2005, American Samoa must provide:

- a. Data for July, August, September, and October 2005 for each eligible infant and toddler who has an IFSP and who does not have an IFSP that contains: (a) present levels of functioning

in all five developmental areas; (b) families resources, priorities and concerns; and (c) justification for services not in natural environments.

- b. The number of child records identified by the Territory through October 30, 2005 as being in noncompliance with IFSP content requirement and for each child record determined to be out of compliance, the corrective actions approved by the Territory including the evidence or correction data required by the Territory to determine that the child record is in compliance and the status of correction.

In the second Progress Report, due on April 14, 2006, American Samoa must provide:

- a. Updated data under 1 above for November and December 2005 and January, February, and March 2006; and
 - b. Updated monitoring data under 2 above for each child record identified as being in noncompliance through March 30, 2006.
- C. Early intervention services are not being provided as required under 34 CFR §§303.340(c) and 303.342(e) (EI service provision).
1. Basis for requiring special conditions.

On page 10 of the FFY 2002 APR, American Samoa indicated that, "early intervention services did not occur in a timely manner." OSEP's June 2004 response required American Samoa to submit a plan that included data (by type of service needed) on how many children of all children eligible since July 1, 2003, including current children, have been waiting for a particular service and the length of time from the development of the child's IFSP and the implementation of the service. At the August 2004 meeting in Washington, DC, OSEP learned that American Samoa had failed to retain needed qualified personnel, including a speech language pathologist and psychologist, for the Part C program. In addition, the review of the child records prior to the verification visit in February 2005, OSEP found that the IFSPs did not include services and timelines for when services would begin (7 records).

American Samoa's noncompliance regarding its failure to provide needed early intervention services to eligible children in the area of speech therapy is directly attributable to its lack of a qualified speech language pathologist.

On page 15 of the FFY 2003 APR, American Samoa reported that due to a lack of personnel and high caseloads for only two service coordinators, it was not able to ensure the provision of early intervention services. Although American Samoa's FFY 2005 application budget identifies that five service coordinators will be retained to provide services, American Samoa still lacks a qualified speech language pathologist.

2. Nature of special conditions.

In the first Progress Report, due on November 21, 2005, American Samoa must provide:

- a. Data for July, August, September and October 2005 for each infant and toddler in the Part C program who has been waiting for a particular EI service and the length of time between the development of the child's IFSP and the implementation of the service, and the EI service the child is waiting to receive;
- b. For each child waiting for a particular EI service, the services being provided to address the child's developmental needs
- c. Its plan including short-term and long-term recruitment and retention strategies to ensure adequate personnel to provide early intervention services in the areas of speech therapy, parent counseling, physical and occupational therapy. The plan must include a list of all employees or contractors retained by the Part C program and copies of contracts for all personnel and a list of duties for each personnel. The plan must include a recruitment strategy to contact institutions of higher education in Hawaii, Washington or the mainland and copies of documentation of all recruitment efforts. The plan must include copies of all

communications with hospitals, clinics and the Part B program regarding any proposals to share speech language pathology personnel.

In the second Progress Report, due on April 14, 2006, American Samoa must provide:

- a. Updated data under 1 above for November and December 2005 and January, February, and March 2006;
- b. Updated data under 2 above for each child record identified as being in noncompliance through March 30, 2006; and
- c. An update of its plan under C.2 c. above through March 30, 2006.

II. Evidence Necessary for Conditions To Be Removed

The Department will remove the Special Conditions, if at any time prior to the expiration of the grant year, American Samoa provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require American Samoa to submit data demonstrating compliance with each of the four noncompliance areas that are the subject of the special conditions under Part C.

III. Method of Requesting Reconsideration

American Samoa can write to Dr. Troy R. Justesen, Acting Director, Office of Special Education Programs (OSEP), if it wishes the Department to reconsider any aspect of these Special Conditions. Any request of this sort should describe in detail the changes to the Special Conditions sought by American Samoa and the reasons for those requested changes. The Special Conditions should be appended to all copies of your eligibility documents that you maintain, distribute, and make available to the public.

IV. Submission of Reports

All reports that are required to be submitted by American Samoa to the Department under the Special Conditions should be submitted to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Julia Martin
400 Maryland Ave, SW
Washington, DC 20202-2550